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EXAMINER

ROBINSON BOYCE, AKIBA K

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/626,576

Applicant(s)

HAY ET AL.

Examiner

Akiba K Robinson-Boyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 52-86 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 and 52-86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>29</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>25</u> . | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Status of Claims

1. The following is a supplemental office action. Claims 1-35, and 52-86 are pending in this application and have been examined on the merits. The previous rejection has been withdrawn and the following rejection is a non-final rejection that reflects the claims as amended.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-35 and 52-86 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

As per independent claims 1, 18, 52 and 69, the following limitation: "develop a set of farms capable of growing a crop of interest" is not supported by the specification. The examiner is unable to find where such limitation is disclosed in the specification.

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Therefore, one skilled in the art would not know how to make and/or use the invention.

All claims that depend on independent claims 1, 18, 52 and 69 are rejected for the same reasons as described above with respect to claim 1, 18, 52 and 69.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-35 and 52-86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per independent claims 1, 18, 52 and 69, the phrase "develop a set of farms capable of growing a crop of interest" makes the claim indefinite. The applicant needs to go into more detail about how the machine is caused to develop a set of farms capable of growing a crop of interest. The phrase by itself is not distinct enough to clarify the claim. All claims that depend on independent claims 1, 18, 52 and 69 are rejected for the same reasons as described above with respect to claim 1, 18, 52 and 69. Correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6, 9, 10, 11, 13-22, 24, 27-29, 31-35, 52-55, 57, 60, 61-62, 64-73, 75, 78-80, 82-86 are rejected under 35 U.S.C. 103(a) as being obvious over Rawlins in further view of Press-Enterprise's article "Flowers Grow Into Profitable, Global Business".

As per claims 1, 18, 21, 52, 69, 72, Rawlins discloses:

A database a farm identifier in communication with the database to develop a set of farms capable of growing the crop of interest\developing/develop a set of farms capable of growing a crop of interest\wherein the step of developing the set of farms is performed by accessing a database, (Col. 2, lines 17-19 w/ Col. 3, lines 50-52, where the examiner is interpreting the 'sample points' of Rawlins as the farm of the present invention and the 'values in longitude and latitude' of Rawlins as the farm identifiers of the present invention and the database as 'storage' in Rawlins);

A competition analyzer cooperating with the farm identifier to estimate profits/estimating profits, Col. 7, lines 15-28);

An offer developer cooperating with the competition analyzer to determine possible offers to be made to the farms in the set of farms/determining possible offers to be made to the farms in the set of farms, (Col. 6, lines 7-10, and lines 31-39, where the field positions are in competition and the offer developer is analogous to the marker dispenser since it inserts a crop marker into the crop stream right before the crop marker is correlated or allocated to the selected field position);

based at least in part upon the estimated profits to be earned for growing the at least one crop, (Col. 5, lines 42-45, Col. 7, lines 15-28, where the offer is based on a match between the selected field position and the actual field position, which is ultimately based on the quality of the crop which is co-dependent with the profits for a crop);

A farm selector cooperating with the offer developer to select farms,\selecting farms, (Col. 6, lines 37-39, where the farm selector is analogous to the crop marker and the farm is analogous to the field or the crop stream in Rawlins).

Rawlins fails to disclose that the set of farms includes a first farm associated with a first farmer and a second farm associated with a second farmer, but does disclose a harvester associated with fields to be harvested in the abstract, lines 1-6.

However, Press-Enterprise discloses:

the set of farms including a first farm associated with a first farmer and a second farm associated with a second farmer, (Page 1, 3rd paragraph, lines 1-2 w/ Page 2, last paragraph, line 1-Page 3, 2nd paragraph, line 5, where the set of farms is represented by the hundreds of flower farms which are offered subsidies to grow flowers instead of coca plants). Press-Enterprise discloses this limitation in an analogous art for the purpose of showing that competition lies between farms growing crops of interest.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include a set of farms including a first farm associated with a first farmer and a second farm associated with a second farmer with the motivation of setting

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up a competitive environment, which would make it easier to persuade at least one of the farms to grow a certain crop.

Rawlins also fails to disclose growing at least one crop, which is different from the crop of interest, but does disclose growing at least on crop in the abstract, lines 18-19, where it is shown that a picker harvests the fruit off a tree where the fruit is the crop that is grown.

However, Press-Enterprise discloses:

Growing at least one crop, which is different from the crop of interest, (Page 3, paragraph 2, lines 1-5, [shows that subsidies are offered to encourage farmers to grow flowers instead of cocoa plants; in this case the crop of interest is represented by cocoa plants]). Press-Enterprise discloses this limitation in an analogous art for the purpose of showing that in the agricultural industry, agencies such as the government do try to persuade farmers to grow one crop over the other.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to grow at least one crop different from the crop of interest with the motivation of growing a crop that would result in maximum profit.

As per claims 2, 19, 53, 70, Rawlins discloses:

Wherein the farm selector selects farms.../wherein the step of selecting farms is based upon at least one of : the estimated profits developed...(Col. 7, lines 15-28).

As per claims 3, 20, 54, 71, Rawlins discloses:

Wherein the farm identifier identifies the set of farms based upon at least one of ...farm capability to grow the crop of interest.../wherein the step of developing the set of

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farms performed by considering at least one of: ...farm capability to grow the crop of interest ...(Col. 6, line 48-Col. 7, line 2).

As per claims 4, 22, 55, 21, Rawlins discloses:

Wherein the database comprises at least one of: a product database...(Col. 6, lines 11-14, [wherein the examiner is interpreting the crop as the product]).

As per claims 6, 24, 57, 75, Rawlins discloses:

Wherein at least one of the at least one database comprises a local database...(Fig. 1 [17]).

As per claims 9, 27, 60, 78, Rawlins discloses:

A profit estimator for estimating a profit.../estimating a profit...(Col. 7, lines 15-28);

A product selector cooperating with the profit estimator.../selecting a most profitable crop...(Col. 6, lines 31-36).

As per claim 10, 28, 61, 79, Rawlins discloses:

A production estimator.../estimating a quantity of the crop...(Col. 2, lines 12-15);

The following is inherent with Rawlins' patent because Rawlins teaches a pricing engine which correlates with the quality of the crop (See Col. 9, lines 5-13). Since both quality and quantity are measures of the item being produced, it would also make sense to utilize the quantity in connection with the pricing engine:

A pricing engine cooperating with the production estimator to develop a price to be offered the farm of interest to grow the quantity of the crop of interest estimated by

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the production estimator.../developing a price to be offered the farm of interest to grow the estimated quantity of the crop of interest.

As per claim 11, 29, 62, 80, Rawlins discloses:

Wherein the offer developer further comprises a risk identifier.../identifying a risk factor...and adjusting the price...(Col. 7, lines 15-23, where the examiner is interpreting where the quality differs in Rawlins adds the risk of the present invention).

As per claims 13, 31, 64, 82, Rawlins discloses:

Wherein the competition analyzer estimates the profits to be earned by farms in the set of farms for growing.../wherein the step of estimating profits further comprises the step of estimating the profits to be earned by farms...(Col. 6, line 60-Col. 7, line 2).

As per claims 14, 32, 45, 83, Rawlins discloses:

Wherein, for a farm in question associated with more than one elevator/loader.../wherein, for a farm in question associated with more than one elevator/loader, the step of determining possible offers comprises determining the possible offer...with a highest relative profit...(Col. 9, lines 5-13).

As per claims 15, 33, 66, 84, Rawlins discloses:

Wherein the offer developer determines the possible offers.../wherein the step of determining possible offers is based in part upon at least one risk factor...(Col. 5, lines 49-66, Col. 6, lines 31-39).

As per claims 16, 17, 34, 35, 67, 68, 85, 86, Rawlins discloses:

Wherein the aggregate economic profiles of the elevators/loaders are based at least in part upon cost and risk...(Col. 7, lines 19-23 w/ Col. 9, lines 5-13).

8. Claims 5, 7, 23, 25, 56, 58, 74, 76, are rejected under 35 U.S.C. 103(a) as being unpatentable over Rawlins (US Patent 5,845,229), in further view of Press-Enterprise's article "Flowers Grow Into Profitable, Global Business" and further in view of Monson (US Patent 5,689,418) as cited by the applicant.

As per claims 5, 23, 56, 74, both Rawlins and Press-Enterprise fail to disclose the following, however Monson discloses:

Wherein at least one of the at least one database comprises an on-line database...(Col. 7, lines 41-47).

It would have been obvious to one of ordinary skill in the art to have an on-line database with the motivation of ensuring accessibility to information in the database by a wide variety of people.

As per claims 7, 25, 58, 76, both Rawlins and Press-Enterprise fail to disclose the following, however Monson discloses:

Wherein the on-line database comprises an on-line exchange...(Col. 3, lines 16-19).

It would have been obvious to one of ordinary skill in the art for the on-line database to comprise an on-line exchange with the motivation of ensuring that information gets traded at a reasonable rate in a reasonable amount of time to a wide variety of people.

Allowable Subject Matter

9. Claims 8, 12, 26, 30, 59, 63, 77 and 81 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 10/30/03 have been fully considered but they are not persuasive.

Applicants traverse the 35 USC § 112 first paragraph rejection given by the examiner. The applicant argues that the phrase "develop a set of farms capable of growing a crop of interest" is enabled by the specification since has been in the application since the day the application was filed. The applicant also argues that the specification, page 11, lines 8-10 and page 11, line 8-page 12 shows how a farm identifier may develop a set of farms capable of growing a crop of interest. The examiner acknowledges the fact that the phrase "develop a set of farms capable of growing a crop of interest" has been in the application since the day the application was filed, however, this phrase is still not enabled by the specification because the specification does not explain in detail how the invention develops a set of farms. The specification does describe a farm identifier that is in communication with the local database and identifies a set of farms based upon several capability elements, as well

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ad farm and elevator/loader discriminators and ultimately identifies the farms and elevator/loaders that cannot advance the objectives of the agricultured entity in a meaningful way. The farm identifier merely identifies farms/elevators/loaders, but does not develop them. Therefore, the 35 USC § 112 first paragraph is maintained.

In addition, the applicant disagrees with the 35 USC § 112 second paragraph rejection. Applicant argues that the claims and supporting specification as written satisfy the requirements of the statute, and that there is no need to include more detail as to the working of the claimed machine so long as the claim language is clear to a person of ordinary skill in the art. However, the claim language is not clear and is indefinite to a person of ordinary skill in the art since "developing a set of farms capable of growing a crop of interest" is not supported by the specification as described above in the preceding paragraph. In addition, the claims do not show how these farms are developed, but merely shows a farm identifier in communication with the database. As described above in the preceding paragraph, the farm identifier identifies a set of farms based upon several capability elements, as well as farm and elevator/loader discriminators and ultimately identifies the farms and elevator/loaders that cannot advance the objectives of the agricultured entity in a meaningful way. The farm identifier merely identifies farms/elevators/loaders, but does not develop them. Therefore, the 35 USC § 112 second paragraph is maintained.

As per claim 1, the applicant argues that Rawlins fails to disclose "an apparatus for selecting farms to grow a crop of interest" and that the portions of the fields are pre-selected by a farmer. However, Col. 6, lines 37-39 shows a crop marker that is

dispensed into the crop stream that matched between the selected field position and an actual field position (See Col. 6, lines 7-10). This crop marker represents the apparatus for selecting farms. In this case, the farms selected are the actual field positions for crop streams that the crop markers are dispensed to. These fields are actual fields and are not pre-selected, but are selected based on a match between a selected field and an actual field.

Further, the applicant argues that Rawlins has no structure to develop a set of farms capable of growing crop of interest. However, Rawlins discloses that in an agricultural setting, resources are optimized in order to produce an optimized yield in Col. 1, lines 32-33. This type of procedure is called precision farming. Rawlins uses precision farming, and selects a sampling pattern, as shown in Col. 2, lines 10-15. This precision farming represents the development of a set of farms capable of growing a crop of interest, where the sampling pattern selected by the farmer is the crop of interest.

In addition, the applicant argues that Rawlins fails to disclose a competition analyzer to estimate profits by farms for growing at least one crop, which is different from the crop of interest. Applicant argues that comparing the actual profits achieved for a quality optimized crop to the actual profits achieved from a yield maximized crop is not estimating profits from growing crops. However, Rawlins compares the profits for a quality crop to the profits associated with a maximum yield plan. In order to compare the profits for a quality crop, one must use the system of Figure 2, which includes a computer and memory [48] in Rawlins to estimate profits of

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the quality crop. In addition, the combination of Rawlins with the article "Flowers Grow Into Profitable, Global Business" discloses "growing at least one crop, which is different from the crop of interest". On Page 3, paragraph 2, lines 1-5, the article "Flowers Grow Into Profitable, Global Business" specifically shows this limitation. Here, it is shown that subsidies are offered to encourage farmers to grow flowers instead of cocoa plants. In this case, cocoa plants represent the crop of interest.

The applicant also argues that Rawlins fails to disclose an offer developer to determine possible offers to be made to farms based at least in part on the estimated profits to be earned for growing the at least one crop that is different from the crop of interest. However, Rawlins discloses this offer developer in col. 6, lines 7-10 and 31-39 where the marker dispenser represents the offer developer since it inserts a crop marker into the crop stream right before the crop marker is correlated to the selected field. Hence, the insertion of the marker into the crop is an indication to offer grow a crop on a certain field based on a match between a selected field position and an actual field position.

Applicant argues that Rawlins discloses physically dispensing a marker into a harvested crop at predetermined locations to enable a tester to later tell where that crop was grown, and according to applicant, has absolutely nothing to do with determining a possible offer to make to a farm. However, Rawlins dispenses a marker into a harvested crop for the purpose of marking the matching crop that potentially will be chosen for growth in a field. Just as the "offer" is an indication of potentially growing a certain crop, "dispensing" is also an indication of potentially growing a certain crop.

Applicant argues that Rawlins fails to disclose a farm selector to select farms to receive an offer to grow the crop of interest. However, the crop marker of Col. 6, lines 37-39 represents this farm selector since the crop marker actually marks the crop stream selected for growing a particular crop.

Applicant also argues that while the Press-Enterprise article establishes that there are many farms in the world and that farmers sometimes receive subsidies to grow certain crops instead of other crops, it does not teach or suggest the farm identifier, the competition analyzer, the offer developer or the farm selector. However, it is the combination of Rawlins and the Press-Enterprise article that establishes these limitations, therefore the rejection for claim 1 has been maintained.

As discussed with respect to claim 1, Rawlins discloses the competition analyzer and the offer developer in claim 52, therefore, claim 52 is rejected for the same reasons.

As per claim 18, the applicant argues that Rawlins does not disclose or suggest developing a set of farms that are capable of growing a crop of interest where profits to be earned by growing a crop which is different from the crop of interest are estimated. As discussed above with respect to claim 1, the combination of Rawlins and the Press-Enterprise article discloses these limitations. On Page 3, paragraph 2, lines 1-5, the Press-Enterprise article specifically shows this limitation. Here, it is shown that subsidies are offered to encourage farmers to grow flowers instead of cocoa plants. In this case, cocoa plants represent the crop of interest, which is different from flowers.

As per claim 16, the applicant argues that Rawlins fails to disclose estimating profits to be earned for growing the at least one crop which is different from the crop of

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interest or selecting farms to receive an offer to grow the crop of interest. However, as discussed with respect to claim 1, these limitations are taught by the combination of Rawlins and the Press-Enterprise article.

As per claim 69, the applicant argues that Rawlins fails to disclose estimating profits for growing crops that are different from the crop of interest. The applicant also argues that Rawlins fails to disclose selecting farms to receive an offer of any kind to grow a crop of interest. However, as discussed with respect to claim 1, these limitations are taught by the combination of Rawlins and the Press-Enterprise article.

For the reasons discussed above, the examiner has maintained her rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 703-305-1340. The examiner can normally be reached on Monday-Friday 8:30am-5pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.



A. R. B.
March 24, 2004



TARIQ R. HAFIZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER